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Report of the United Nations Conference on Trade and Development on its eleventh session

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the report of the United Nations Conference on Trade and Development on its eleventh session, which was held in São Paulo, Brazil, from 13 to 18 June 2004 (see TD/412).

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Human rights questions: human rights situations and reports of special rapporteurs and representatives

Report of the independent expert of the Commission on Human Rights on the situation of human rights in Afghanistan

Note by the Secretary-General*

The Secretary-General has the honour to transmit to the members of the General Assembly the report of the independent expert on the situation of human rights in Afghanistan, M. Cherif Bassiouni, submitted pursuant to the mandate established by the Commission on Human Rights in its resolution 2003/77 and extended by the Commission at its sixtieth session in 2004, endorsed by the Economic and Social Council in its decision 2004/284.

Summary

The present report contains the findings of the independent expert, M. Cherif Bassiouni, on the current human rights situation in Afghanistan. It is based on research and consultations undertaken since his appointment in April 2004, on the basis of a mission to the country in August 2004 and extensive consultations held during that mission. The report is in partial fulfilment of the mandate established by the Commission on Human Rights in its resolution 2003/77. As this is the first report of the independent expert, it surveys some of the major issues that have a determining impact on the human rights situation in Afghanistan. The situation in that country involves a wide range of issues, including past and present violations committed by State and non-State actors, both as elements of widespread and systematic policies, and as a result of individuals operating beyond the reach of the

* The present report is submitted after the deadline established by the General Assembly in view of the fact that the independent expert was appointed only in April 2004 and undertook his mission to Afghanistan from 14 to 22 August 2004.

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law. Key to understanding these violations are the problems of security in a country that is still dominated by the military power of warlords and local commanders, and by the rising economic power of those engaged in poppy cultivation and heroin traffic. A number of priority issues have been identified by the independent expert where action needs to be taken by the Government and other actors. Concrete recommendations are included in the report. They concern the problems of security, warlords and local commanders, the rule of law, detention facilities and due process, the situation of women and children, land disputes and housing, transitional or post-conflict justice, the strengthening of civil society, and the actions of the Coalition Forces and the International Security Assistance Force. Despite progress, deep concerns remain about the human rights situation in Afghanistan and many challenges are still to be overcome.

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I. Introduction

1. The present report contains preliminary observations regarding the current human rights situation in Afghanistan and issues relevant to capacity-building. It is in partial fulfilment of the mandate provided by the Commission on Human Rights in its resolution 2003/77, adopted at its fifty-ninth session, in which it requested the Secretary-General to appoint an independent expert "for a period of one year to develop, in strict collaboration with the Transitional Authority, including the Afghan Independent Human Rights Commission, as well as with the Office of the High Commissioner for Human Rights and the [United Nations] Assistance Mission [in Afghanistan], a programme of advisory services to ensure the full respect and protection of human rights and the promotion of the rule of law and to seek and receive information about and report on the human rights situation in Afghanistan in an effort to prevent human rights violations". At its sixtieth session, the Chairperson, on behalf of the Commission, made a statement concerning technical cooperation and the situation of human rights in Afghanistan (see E/2004/23-E/CN.4/2004/127), in which the Commission requested the independent expert to report on the situation of human rights in Afghanistan and on the achievements of the technical assistance in the field of human rights to the General Assembly at its fifty-ninth session, and requested the Secretary-General to extend the mandate of the independent expert for a further year. The Economic and Social Council endorsed this request in its decision 2004/284.

2. The independent expert was appointed by the Secretary-General in April 2004, and submitted a statement to the Commission (E/CN.4/2004/102/Add.1, annex). The independent expert held a round of consultations in Geneva on 28 and 29 April 2004 with representatives of Governments, intergovernmental organizations and non-governmental organizations (NGOs) with the aim of presenting his mandate and gathering support for its fulfilment. Between April and August, he examined United Nations and other available reports, and from 14 to 22 August 2004, he undertook a mission to the country, during which he held extensive consultations and meetings with senior governmental officials, including President Karzai, Vice-President Shohrani, President of the Supreme Court Judge Shinwari, Vice-President of the Supreme Court Judge Ma'anawi, Minister for Foreign Affairs Abdullah, Minister of the Interior Jalali, Prosecutor General Doqiq and others. The independent expert also met on several occasions with members and staff of the Afghan Independent Human Rights Commission (AIHRC). During these consultations, he was briefed extensively on the work of AIHRC. Other consultations and briefings were held on several occasions with 32 Afghan human rights organizations, as well as with individual human rights activists. Inspection visits were carried out with the cooperation of the Ministries of Justice and the Interior at the prison of Pol-e Charkhi, and to the women's detention facility in Kabul. In addition, consultations and briefings were held with a number of foreign missions in Afghanistan, including those of the United States of America, States members of the European Union (EU) and the representative of EU. The independent expert also benefited from briefings by the staff of the United Nations Assistance Mission in Afghanistan (UNAMA), including the Special Representative of the Secretary-General for Afghanistan, the Deputy Special Representatives and the head of human rights unit, and United Nations agencies operating in the country, including the United Nations Development Programme (UNDP), the Office of the United Nations High Commissioner for Refugees (UNHCR), the United Nations Office on Drugs and

Crime (UNODC), the World Health Organization (WHO), the United Nations Children's Fund (UNICEF) and the World Bank. Additionally, meetings were held with representatives of international NGOs and individual experts.

3. The independent expert wishes to acknowledge the cooperation of President Karzai and other senior government officials, United States Ambassador Khalilzad, EU Ambassador Vendrell, as well as the support and assistance of the Special Representative of the Secretary-General, Jean Arnault, and UNAMA staff, and the Office of the United Nations High Commissioner for Human Rights (OHCHR).

4. The human rights situation in Afghanistan involves an extensive range of issues, including past and present violations committed by both State and non-State actors, operating beyond the reach of the law as elements of widespread and systematic policies, and by individuals. The violations identified constitute gross violations of fundamental human rights such as extrajudicial execution, torture, rape, arbitrary arrest and detention, inhuman conditions of detention, illegal and forceful seizure of private property, child abduction and trafficking in children, various forms of abuse against women and a variety of other violations committed against the weaker elements of society, such as minorities, returning refugees, women, children, the poor, and the handicapped.[1]

5. Key to understanding these violations are the problems of security in a country that is still dominated by the military power of warlords and local commanders and by the rising economic power of those engaged in poppy cultivation and heroin traffic (see paras. 37-38 below).[2] The absence of security has a direct and significant impact on all human rights. As the Secretary-General stated in his report to the General Assembly and the Security Council:

> "The security situation in Afghanistan is volatile, having seriously deteriorated in certain parts of the country.... The deterioration of the security situation must be addressed resolutely. This requires increased international forces, sufficient in number and area of responsibility, and the full cooperation of neighbouring States" (A/58/868-S/2004/634, paras. 17 and 27).

6. Most human rights violations occur at the hands of warlords, local commanders, drug traffickers and other actors who wield the power of force and who exercise varying degrees of authority in the different provinces and districts. These actors' control and influence is in some provinces and districts absolute, while in others, it is partial or marginal. The Government is for the most part unable to exercise effective control over these actors, and has in that respect limited support from the Coalition forces and the International Security Assistance Force (ISAF). Thus, despite the Government's best intentions, it cannot with the 10,000-15,000 troops of the fledgling Afghanistan National Army (ANA) effectively oppose the estimated 100,000 armed and battle-tested forces loyal to the warlords and local commanders (see paras. 29-32 below) [3]

7. The Coalition forces, which at one time could have marginalized these warlords, did not do so, and even worked with them to combat the Taliban regime and to pursue Al-Qaida (see para. 34 below). This situation contributed to the entrenchment of the warlords. Subsequently, however, the Coalition forces and ISAF have supported the Government's programme of disarmament, demobilization, and reintegration (DDR) of combatants, with so far only marginal success. As stated by the Secretary-General:

> "There has been insufficient progress in the disarmament, demobilization and reintegration of factional forces. The commitment made at the Berlin conference was to achieve the disarmament, demobilization and reintegration of no less than 40 per cent of the stated troop strength of 100,000 Afghan Militia Forces, as well as the cantonment of all heavy weapons under credible supervision by June, ahead of the 2004 elections" (ibid., para. 29)

It is this power equation that has an impact on the human rights situation and on the Government's ability to prevent and redress human rights violations that derive from it.

8. The paramount factor affecting human rights is security. To understand this requires an appreciation of the state of conflict and turmoil which the country has experienced over the past three decades, and whose consequences have an impact upon so much of the present situation (see paras. 26 et seq. below). Moreover, it is important to bear in mind that the Taliban forces defeated in 2001 reintegrated into society, and constitute a strong force opposing the Government.

9. At the outset of this report, the independent expert expresses special concern at pressing human rights issues about which the Government is in a position to take immediate corrective action. These issues include the following, all of which are described in greater detail below:

(a) The illegal detention for nearly thirty months of some 734 Pakistani and Afghani detainees in the Pol-e Charkhi prison, under conditions which violate the United Nations Standard Minimum Rules for the Treatment of Prisoners (see para. 65 below). The independent expert asked the Minister of Justice on 17 May 2004 to release these prisoners. Subsequently, during his mission to Afghanistan, he met President Karzai and other senior officials, reiterating this request. On 12 September 2004, President Karzai ordered the release of 362 Pakistani detainees, and on 13 September 2004, 372 Afghani detainees were released. The independent expert commends President Karzai and his Government for this wise and humane decision, though he continues to urge the Government and the international community to significantly enhance the conditions of Pol-e Charkhi prison, which houses a large number of criminally sentenced detainees;[4]

(b) The detention facilities operated by United States-led Coalition forces in Bagram, Kandahar, and in field "fire bases" unregulated by a Status of Forces Agreement (SOFA) (at least none that is publicly known or disclosed by any public official), where an estimated 300-400 detainees are held without legal process under international humanitarian law or domestic law. Their conditions of detention are unverifiable (see paras. 50-53 below).[5] It should be noted that the independent expert requested from appropriate United States authorities permission to visit the Bagram prison facilities, but bureaucratic impediments de facto prevented his access;

(c) The exposure of returning refugees to extrajudicial execution, torture, rape and extortion and the seizure of their lands and homes by local commanders, forcing them to become internally displaced persons (IDPs) (see paras. 70-72 below);

(d) The absence of due process in the arrest and detention of persons by the Intelligence Department and Police Forces that are outside judicial supervision, detaining persons accused of crimes for extended pre-trial detention periods and, in

general, a failure of the justice system to perform its function. As the Secretary-General stated:

> "Progress is hampered by a lack of coordination between the main justice institutions; the inroads made by the drug mafia at many levels within the institutions of State, the slow expansion of effective national security institutions, interference by civil and military authorities in the administration of justice, as well as a lack of adequate financial support and coordination of reform programmes in the security sector" (ibid., para. 39);

(e) The detention conditions in prisons, particularly with respect to women and children, which violate most of the United Nations Standard Minimum Rules for the Treatment of Prisoners and other human rights instruments, because of the lack of specialized facilities;

(f) The egregious practices concerning women accused by spouses and male relatives of acts that do not constitute a crime under Afghan laws, but who are nonetheless convicted and, when convicted by tribal judges or councils, are confined to the tribal chief's custody and are de facto reduced to a slave-like condition. President Karzai was informed by the independent expert of this situation and promised action. As the Secretary-General stated:

> "Women continue to be detained for offences against social mores; 'honour crimes' and death threats often follow a woman's escape from a forced or arranged marriage. The absence of legal and social support systems has left many women trapped in abusive situations, from which they sometimes try to escape by drastic measures, including suicide and self-immolation ..." (ibid., para. 50);

(g) The continued legality of the transfer of young girls in marriage as payment of "blood money" often placing them in slave-like conditions. President Karzai spoke out publicly against this practice in March 2004;

(h) The reportedly increasing practice of child abduction and child trafficking, which seems to pass under the radar screen of law enforcement. President Karzai was informed by the independent expert of this situation and promised action. As the Secretary-General stated:

> "Child kidnappings also continue to increase. Some families in the provinces of Helmand and Kandahar and elsewhere have become reluctant to send their children to school because of fears they will be abducted. Evidence suggests that the kidnapped children are being trafficked for sexual purposes and forced labour. The Government, in cooperation with the Afghan Independent Human Rights Commission, is focusing on the problem and has recently formulated a national plan of action to combat trafficking in children" (ibid., para. 51);

(i) The high level of corruption among government officials, including law enforcement and the judiciary, which is related to low salaries, insufficient training and sensitization and, in particular, lack of administrative control and enforcement;

(j) The illegal forcible evictions and seizure of land and homes belonging to refugees and to minorities. As the Secretary-General stated:

> "Complaints about forced eviction and the illegal occupation of land continue to be pervasive throughout the country. Efforts by the courts to address these

issues have generally failed because many of the perpetrators are connected to powerful figures within the Government. President Hamid Karzai has appointed a commission, chaired by Vice-President Karim Khalili, to investigate the matter. The commission has, however, acknowledged that the level of corruption in the municipalities has prevented it from being effective. United Nations bodies, including UNHCR and the United Nations Centre for Human Settlements (Habitat), as well as other international agencies, are attempting to assist the Government in its efforts to address the matter" (ibid., para. 52).

10. These situations are highlighted because the Government can, for the most part, act to redress them without delay, even within the current context. Some actions may have immediate effect; others may take more time to produce tangible results.[6]

11. The Government's accomplishments in the last two years in the face of difficult conditions are impressive. However, much is still needed, and the Government is aware of the complex challenges it faces. It should be noted that as the Government makes progress in different areas, expectations of higher performance and better results increase. However, serious advances in the protection of human rights require substantial and sustained support on the part of the international community as well. There is a feeling in Afghanistan that, as has happened before, the country's people and needs will soon be forgotten.

II. Sociopolitical context

12. Afghanistan is a landlocked nation that shares over 5,000 kilometres of border with China, the Islamic Republic of Iran, Pakistan, Tajikistan, Turkmenistan and Uzbekistan. The population is estimated at 28 million, almost half of whom are under 18 years old.[7] Afghanistan has a diverse population divided among the Pashtun (42 per cent), Tajik (27 per cent), Hazara (9 per cent), Uzbek (9 per cent), Aimak (4 per cent), Turkmen (3 per cent), Baloch (2 per cent) and others. Approximately half the population speaks Dari, a third speak Pashtu, and 10 per cent speak Turkic languages, primarily Uzbek and Turkmen. Different groups dominate particular regions of the country, and ethnic tensions play a central role in regional politics and are often associated with violence, discrimination and various types of serious human rights violations. About 8 out of every 10 Afghans are Sunni Muslims, with the remaining population Shi'ah Muslims with a few members of other Muslim sects. Historically, a sense of centralized statehood has been lacking: this is essentially an ethnic and tribal society where these characteristics predominate.[8]

13. For almost three decades, Afghanistan has suffered extraordinary devastation as a result of near constant violent conflict. While exact statistics are unavailable, it is believed that 1.5 million Afghans, the majority of whom were civilians, have died as a result of internal conflicts. These include battlefield casualties as well as civilian victims of massacres, disappearances, indiscriminate bombing and shelling, landmines, unexploded ordnance, as well as indirect victims who have died of exposure, hunger and disease as a result of the violence. The conflicts are believed to have forced over 6 million Afghans to become refugees, mainly in Pakistan and the Islamic Republic of Iran, and over 1.4 million to become IDPs.[9]

14. The violence has destroyed the nation's limited infrastructure and prevented the country from advancing in almost every area of social and economic development. Consequently, Afghanistan presents some of the world's worst social statistics, with a life expectancy of only 42 years and an infant mortality rate of 167 per 1,000 live births. Only half of Afghan men and one fifth of Afghan women are literate. Significant portions of the population lack access to adequate housing, clean water, electricity and medical care.

15. The territory of Afghanistan has long been subjected to invasion and violent conflict. The Afghan people have a history of resisting foreign domination and a culture of military organization along local, regional and ethnic lines. However, the political violence of the last several decades has been especially destructive, allowing political authority to rest in the hands of ethnic armed groups that have grown accustomed to acting with near complete impunity. In addition, the conflict has heightened ethnic and regional tensions.

16. While Afghanistan is one of the world's poorest countries, the nation now has an opportunity for social and economic development as a result of a willingness on the part of the international community to invest resources in the nation's reconstruction.[10] The country has various development possibilities, but it remains a non-industrialized nation with an agriculture-based economy. Afghanistan is in need of significant, sustained assistance if it is to seriously address its pressing social problems and develop a viable economic base and a unified, functioning national government. It is, however, the world's largest producer of opium, an industry whose sales account for about 68 per cent of the nation's gross domestic product (GDP).[11]

17. Economic development requires the existence of a strong and effective central bank capable of monitoring a banking system, and a system of financial credit. This does not exist in Afghanistan. The central bank essentially prints currency. There is no banking system, and in fact, only two foreign banks have recently opened offices in Kabul. Financial transactions are in cash, and the cash economy is dominated by drug profits. In the last two years, the Government and the international community have not focused enough on this problem. Considering that proceeds from drugs are estimated to bring in $1 billion a year (see paras. 37-38 below), one can only imagine the negative impact even a small portion of these proceeds has on the country's submerged economy. In a short period of time, the economy will simply be controlled by the drug lords.

III. Overview of the armed conflict and past human rights and humanitarian law violations

18. For nearly three decades, Afghanistan has been a zone of intense armed conflict, characterized by significant violations of international humanitarian and human rights law. The country has experienced a series of distinct, yet intertwined armed conflicts that have played a central role in global political struggles, including the cold war and the rise of Islamic fundamentalism. Briefly, key periods in the nation's history of conflict include: the civil unrest of 1978, the Soviet invasion and occupation from 1979 through 1989, the post-Soviet struggle for power from 1990 through 1992, the establishment of a tenuous Islamic State characterized by significant competition for power and continued violence in the early 1990s, the

ascendancy of the Taliban in 1996 and the United States-led invasion of 2001.[12] The sequence of these events is as follows:

(a) In 1973, the monarchy was overthrown by a Marxist-Leninist group that in turn was overthrown in 1978 when a Marxist-style republic was established. The Democratic Republic of Afghanistan engaged in repressions which included summary executions of a number of those whom they perceived as opponents of the Marxist regime, in particular those who appeared to have Islamic leanings. It is estimated that thousands of people were killed. Ethnic minorities were also repressed, in particular the Hazaras. The country descended into civil war and chaos;

(b) In 1979, the Union of Soviet Socialist Republics sent troops into Afghanistan to shore up that regime. They met with resistance and the occupational forces of over 115,000 responded with violent counter-insurgency strategies, which included extrajudicial executions, disappearances, systematic torture, mass arrests, and other widespread and systematic violations of fundamental human rights. The occupation forces were aided by an Afghan State security office organized by KGB (KhAD). During this period of occupation, it is estimated that one million Afghans were killed and five million became refugees;

(c) Organized resistance to the foreign occupation was carried out by Afghan and other volunteers from Muslim countries called mujahedin. Afghanistan became one of the battlegrounds of the cold war;

(d) In 1988, the Soviet Union and the leaders of the mujahedin resistance negotiated a peace accord that led to the withdrawal of foreign troops. It did not lead to the establishment of a stable Government as the Soviet Union continued to support a communist Government in Afghanistan that lacked legitimacy and faced Islamic resistance;

(e) In 1992, the Northern Alliance was formed by the combined forces of Tajik, Uzbek and Hazara leaders. They took control of Kaoul, deposed the pro-Soviet President and formed the Islamic State of Afghanistan. However, various factions divided along ethnic lines continued to fight for power, leading to a vicious civil war. The countryside was divided among different armed groups, many of whom were mujahedin commanders who established themselves as powerful local warlords and who controlled regions of the country in a brutal authoritarian manner;

(f) The Taliban emerged within this context as disillusioned mujahedin committed to establishing a new, stable Afghan Government founded on fundamentalist interpretations of Islamic law. Taliban leaders were generally Pashtun commanders who followed Mullah Mohammad Omar. In 1996, the Taliban took Kabul and later renamed the country the Islamic Emirate of Afghanistan. They enforced a highly restrictive and primitive vision of Islamic law involving repressive measures and widespread human rights violations;

(g) As fighting continued in the late 1990s, the Northern Alliance was reconstituted under the leadership of Ahmed Shah Massoud. Osama bin Laden and his Al-Qaida organization/network, who had supported the mujahedin since the early 1980s, gained an important role within Afghan society and set up training sites for terrorist operatives. Following the 11 September terrorist attacks, United States forces working with key allies and the Northern Alliance defeated the Taliban.

IV. The Transitional Administration

19. In December 2001, a meeting of Afghan leaders and foreign Governments was held in Germany to formulate a plan for the new Government, which was outlined in a document known as the Bonn Agreement. The plan contained a number of human rights commitments, including State acceptance of international human rights standards, protections for women's rights, the establishment of an independent human rights commission and national programmes of human rights education in Afghanistan. Under the terms of the agreement, these activities were to be supported by the United Nations.

20. In June 2002, a nationwide Emergency Loya Jirga (Grand Assembly) was held and Hamid Karzai was elected President of the Transitional Islamic State of Afghanistan. The Transitional Authority convened a Constitutional Loya Jirga from late 2003 to early 2004 that led to the approval of a new constitution, including support for a strong executive branch, a moderate yet central role for Islam, and support for key human rights principles.

21. Nationwide elections are set to take place on 9 October 2004 (presidential) and spring 2005 (parliamentary). Currently, voter registration figures are reported to be high, including a high percentage of women.

22. AIHRC was established by presidential decree in June 2002 on the basis of the Bonn Agreements. AIHRC engages in human rights monitoring and investigation, human rights education, advocacy and transitional justice.

23. UNAMA was established by the Security Council by resolution 1401 (2002) and its mandate was most recently renewed by Council resolution 1536 (2004). UNAMA is responsible for fulfilling the responsibilities of the United Nations under the Bonn Agreement, promoting national reconciliation, and managing United Nations humanitarian, relief, recovery and reconstruction activities in Afghanistan. UNAMA was established to integrate the work of some 16 United Nations agencies operating in Afghanistan and to link these programmes to national and international NGOs and the Government of Afghanistan.[13] Its human rights work focuses on three main issues: assisting Afghanistan in building its national capacity in the area of human rights, primarily through AIHRC; developing appropriate protection policies and coordinating rehabilitation, recovery and reconstruction activities in a way that promotes human rights, particularly for vulnerable sectors of Afghan society; and investigating alleged human rights violations and proposing corrective actions to the Government.

24. A Human Rights Advisory Group was established in February 2003, composed of representatives of the Afghan Transitional Authorities, donor countries, United Nations agencies and AIHRC. The Group is part of a broader consultative exercise coordinated by the Afghan Transitional Authorities to improve coordination between the Government, the United Nations system, donors and NGOs in the process of preparing the national development budget.

25. The Afghanistan United Nations Country Team (UNCT), with the participation of governmental and non-governmental stakeholders, is currently engaged in the common country assessment/United Nations Development Assistance Framework (CCA/UNDAF) process. CCA is to be finalized by the end of October 2004, while UNDAF will be developed in 2005. The Resident Coordinator has endorsed a rights-

based approach. The following four thematic working groups have been set up for the assessment phase: Governance; Justice, Peace and Security; Economic Growth and Development; and Social Safety Nets and Policy. Training and materials have been provided to members of the working groups in an attempt to ensure the integration of human rights in the process. The overall objective is for a five-year coordinated programme of development assistance provided by United Nations agencies.

V. Security and the rule of law

26. As stated in paragraph 5, security issues pervade every aspect of contemporary Afghan social reality and represent the most significant threat to national reconstruction and the protection of human rights. The Government and the people typically describe security as their primary concern, a conclusion further supported by a number of studies conducted by international and local organizations.[14] The situation is deemed serious by all concerned, particularly if current trends continue and the country remains dominated by warlords, local commanders (see paras. 29-32 below) and drug lords (see paras. 37-38 below).

27. Afghans' experience of significant daily uncertainty is the result of a variety of factors linked to a failure on the part of the Government to establish itself as the primary guarantor of social order within the national territory. To understand the security situation and its threat to basic human rights, it is useful to review the following factors: (a) the rising incidence of common crime; (b) the increasing power and influence of warlords and local commanders; (c) the poor integration and unclear centralized control of Afghan security institutions; (d) the limited mandate and presence of ISAF as well as the goals and actions of the Coalition forces; (e) the questionable success of the DDR process; (f) a significant increase in poppy cultivation, opium production and drug trafficking; (g) rampant corruption; (h) the continued violent actions of anti-Coalition and anti-Government forces; (i) a marked absence of rule of law; and (j) the fundamental incoherence in the post-conflict security policies of the Coalition forces and ISAF.

28. Afghans fear for their daily safety. Illegal activities are on the rise, including murder, robbery, theft, rape, kidnapping, unlawful seizure of property and other common crimes. Women and girls are especially affected by this lack of security, sometimes avoiding school or travel to hospitals out of concerns for their safety.[15] While rising crime rates are a common component of post-conflict social reality, what is perhaps most threatening about the current situation is the relationship between the illegal activities and the persons who control political power, whether formal State actors or those who yield power in the absence of effective State organs. In many regions of the country, local government leaders are directly implicated in a vast array of illegal activities including car theft rings, extortion, smuggling, and the use of illegal roadblocks to force payment from truck drivers and others. In some areas, the situation is so bad that these practices severely delegitimize the State, bringing into question the validity of the reconstruction process on the ground.

Warlords and local commanders

29. As a result of decades of armed conflict, ethnic allegiances and the prolonged absence of a legitimate centralized State, local and regional power within Afghanistan is subject to the authority exercised by a variety of armed actors commonly referred to as warlords. These warlords' local commanders wield authority through a combination of arms, mutually supportive relationships with other armed actors, social networks and ethnic allegiances. Some key figures in Afghan politics might be described as classic warlords through their exercise of a monopoly of economic and military authority over a sizeable area. Others, who might be termed petty warlords or local commanders, exercise authority over a relatively small area and have only minor backing by genuine force. Often, the power of less dominant commanders is the result of linkages and networks with a number of armed actors.[16] Overall, there exist numerous non-State armed groups throughout the country. Alone, few of these groups and their leaders pose a fatal threat to a unified, central Government, but combined, they do. They also present a significant impediment to a unified national Government capable of preventing these groups from committing gross violations of fundamental human rights.

30. The Coalition forces, by far the most powerful military force in the country, did not marginalize these warlords when it could have done so earlier in the reconstruction process. Instead, they worked with many warlords and local commanders to counter remnants of the Taliban and Al-Qaida. This increased the real and perceived authority of these warlords and local commanders.[17]

31. The general context within which non-State armed actors wield ever-greater authority is bound to the macro-political context of post-conflict Afghanistan in which they have been provided with a quid pro quo, mostly national and local authority usually in return for their agreement to participate in the political process and in the process of national reconstruction.[18] The general trend can be traced back to the Bonn conference when many warlords and leaders of armed factions were invited to participate in the new government. Then, at each of the ensuing stages of establishing a national Government, these individuals and groups have been allowed to gain ever-greater access to political power. This can be seen in the management of the Emergency Loya Jirga and the Constitutional Loya Jirga and in the composition of the Government. The presence and authority of these warlords is evidenced at every level of the Government of Afghanistan, from the Cabinet to regional and local positions throughout the country.[19]

32. The long-term validity of a realpolitik strategy of legitimizing warlords and local commanders and of co-opting them into legitimacy is highly questionable. The situation is especially troubling for two contradictory reasons. The first is that there exists broad popular support for delegitimization of most of the warlords and reducing the influence of others to make them subordinate to the national Government. The second is that the country remains essentially ethnic and tribal, and local leaders have naturally strong popular support in their respective regions. The latter has implications on disarmament, which is complicated by the fact that the people have historically been armed and are not likely to give this practice up easily. However, disarming groups of their tanks and artillery is both necessary and possible (see para. 35 below).

ISAF and the North Atlantic Treaty Organization

33. Currently, foreign troops in Afghanistan are divided between ISAF and the Coalition forces (Combined Forces Command-Afghanistan and Operation Enduring Freedom). ISAF is a relatively small multinational force (6,500 troops) based in Kabul, created to support domestic security. It has a limited mandate that echoes the "light footprint" concept of the general Afghan reconstruction process. The ISAF has become a NATO project involving 35 countries. Despite the volatile political context of post-Taliban Afghanistan and the country's long history of violent factional conflict, the international community has contributed an exceedingly small number of foreign troops in comparison with other post-conflict contexts. Currently, Afghanistan hosts approximately 26,000 foreign troops (ISAF and Coalition forces), which represents approximately one foreign soldier for every 1,115 Afghans and one foreign soldier per 25 square kilometres. This compares with 40,000 foreign troops in Kosovo (one foreign soldier for every 50 residents; one per 0.3 square kilometres); 60,000 in Bosnia (one foreign soldier for every 66 residents; one per 0.85 square kilometres); 9,000 in East Timor (one foreign soldier for every 111 residents; one per 1.6 square kilometres); and 18,000 in Sierra Leone (one foreign soldier for every 300 residents; one per 4.0 square kilometres). In other words, the international community has often contributed military force that provides as much as 1,000 per cent more coverage.[20]

34. The Coalition forces are the United States-led international military force that initially invaded Afghanistan in order to remove the Taliban regime that explicitly supported the Al-Qaida movement responsible for the 11 September 2001 terrorist attacks. They continue to pursue that goal almost exclusively. The objectives of the Coalition forces have only a limited relationship to the daily security concerns of most Afghans, which is an especially troubling situation given that foreign troops play a major role and have the capabilities to reduce the power and influence of warlords and local commanders.

The DDR process

35. As a result of work at the Tokyo Conference on Consolidation of Peace in Afghanistan, a voluntary disarmament, demobilization, and reintegration (DDR) process was negotiated. The goal of the programme is the disarmament of approximately 100,000 soldiers. The DDR process is linked to the Afghanistan New Beginnings Programme, which provides training and other assistance to either integrate combatants into civilian life or ANA. The DDR process is progressing slowly, essentially because the Government and ISAF do not have the military capabilities to carry it out, and the Coalition forces are disengaged from the process.[21]

Anti-Coalition and anti-Government forces

36. There currently exists a significant security threat on the part of a variety of forces referred to as "anti-Coalition forces" (when operating in areas of Coalition influence and control) or "anti-Government forces" (when staging operations against the Government and international assistance programmes that support national reconstruction). These groups are composed of former Taliban, Al-Qaida, members of Hezb-i-Islami, and perhaps others. They have engaged in steady acts of

relatively small-scale violence, targeted assassinations, bombings, rocket attacks and occasional armed assaults.

Opium cultivation and drug trafficking

37. It is estimated that 3,600 tons of opium were produced in 2003, the second largest harvest since 1999. After the Taliban banned opium cultivation in 2000, production fell to 5 per cent of current estimated levels. The Afghan poppy harvest is believed to account for 75 per cent of the heroin sold in Europe. The drug industry is estimated to have produced $1 billion in income for the producers and traffickers, involving 7 per cent of the population in 28 of the 32 provinces. The links between drug cultivation and the warlords and local commanders are increasing.[22] As this trend continues, these leaders and their armed supporters will gain increased power and may become so dominant within the areas they control that they will be virtually impossible to dislodge.

38. The substantial income produced by the cultivation of the poppy and drug trafficking, admittedly all of which is based on estimates that have not been verified, creates a powerful economic/military base for warlords and drug lords. Thus, if this trend continues, the warlords may depend less on their present-type military power and rely more on their newly gained economic power, which is more likely to translate into socio-political power. The longer-term dangers to the security, stability and well-being of Afghanistan will probably derive from these factors.

Afghan security institutions

39. The Government has distinct security forces: ANA, under the direction of the Ministry of Defence, the Afghan police services (composed of the National Police, the Border Police, as well as local and regional police), under the direction of the Ministry of the Interior, and an intelligence apparatus, the National Security Directorate (NSD), under the direction of the Presidency. The personnel of these institutions are for the most part poorly trained, underpaid, and lack motivation to serve the Government's policies of security, reconstruction and the affirmation of the rule of law. The allegiances of these bodies' personnel remain linked to ethnic and local leaders. There is poor coordination between these bodies, reducing their effectiveness. There is also no system of internal control over illegal, corrupt, or unauthorized practices or to stem human rights violations. Even combined, these forces are unable to control the warlords, local commanders, drug cultivation and trafficking, common criminality and human rights abuses.[23]

40. All of these combined factors have produced a situation wherein gross violations of fundamental human rights are commonplace. It is self-evident that the security conditions described above, the absence of effective army and police forces, the weakness of the judiciary, and the generally dysfunctional and corrupt administration augur poorly for enforcing the rule of law. The Government desires a stable society founded on human rights principles, as do the people, yet the nation faces threats from oppressive and violent groups. Afghans find it particularly disturbing to see the leaders of such groups, who are known to have committed gross violations of fundamental human rights, war crimes and crimes against humanity, benefit from impunity, and even become part of what is deemed the legitimate Government.[24]

VI. The human rights actors

41. In addition to UNAMA, several United Nations agencies are actively involved in humanitarian and human rights work. They include UNHCR, UNICEF, UNDP, WHO and the World Bank. The work of these agencies is invaluable, and far more extensive than the international community is aware of.

42. AIHRC is the central human rights organization in Afghanistan. It was created in 2002 by presidential decree, and has 11 commissioners and a total of 315 additional staff. The Commission is based in Kabul and has eight satellite offices and two provincial offices. It has separate units for children's rights, human rights education, monitoring and investigation, transitional justice, and women's rights. The Commission receives complaints from people around the country and seeks to resolve them through negotiation, court cases, complaints to government ministries and general social activism. The independent expert commends AIHRC for its courageous efforts to document human rights violations throughout the country and to assist Afghans in seeking redress for harm.

43. OHCHR is integrated into the peacekeeping mission to ensure that existing human rights capacities can provide technical support to Afghan initiatives, in particular, AIHRC and the assistance mission. OHCHR supports UNAMA through the work of a senior human rights adviser who reports to the Special Representative of the Secretary-General and to OHCHR and who coordinates all of human rights-related activities undertaken by UNAMA. OHCHR also supports the efforts of UNAMA to ensure that all the United Nations activities include the promotion and protection of human rights, the implementation of the work plan developed by AIHRC through the provision of technical expertise (senior technical adviser, adviser on gender, adviser on human rights education), and transitional justice processes in Afghanistan.

44. OHCHR has undertaken a mapping exercise to ascertain from publicly available sources the extent of gross violations of fundamental human rights during the past 30 years of conflict.[25] This exercise should be the beginning of a process leading to accountability and avoiding impunity.[26] AIHRC also recently surveyed over 4,000 victims of past abuses to ascertain what form of post-conflict justice modalities should be pursued.

45. In 2003, OHCHR provided expertise for the organization of a workshop on reporting to the treaty bodies (February 2004). The consultations that took place in this context have yielded significant results in terms of follow-up and commitment from the authorities (formalized in Berlin in April 2004) to a six-year reporting scheme and a request for technical assistance to pave the way for its implementation. A joint OHCHR-UNAMA-UNDP project is under preparation to provide preliminary capacity to the Ministry for Foreign Affairs to meet its obligations under those international human rights instruments to which Afghanistan is a party. The independent expert welcomes this initiative.

46. There are many domestic and international human rights organizations in Afghanistan. The independent expert met with representatives of 32 such organizations. They are part of a growing civil society network engaged in every field of human rights. Their cumulative work and that of AIHRC helps reveal the extent of human rights violations throughout the country and focuses the Government's attention on the necessity of addressing these issues. In addition,

these groups engage in popular education and sensitizing public opinion on the role of human rights within the process of national reconstruction.

47. The international community is also actively involved in supporting human rights and humanitarian efforts. Many governments, particularly those of the EU (and the EU itself), are actively supporting these and other human rights and humanitarian issues. There are several bilateral efforts, some stemming from the Bonn Agreement, such as Italy's in the field of the judiciary and prisons,[27] and Germany's in the field of police training.[28] Australia, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Japan, New Zealand, the Netherlands, Norway, Sweden, Switzerland, and the United States have programmes of assistance in humanitarian and human rights fields.[29]

48. Many international NGOs are active in the fields of humanitarian assistance and human rights.[30]

VII. Coalition forces

49. The Coalition forces serve as a role model for the management of authority within Afghanistan. When they engage in practices that violate or ignore the norms of international human rights and international humanitarian law, they establish a double standard, enabling the continuation of abuses by various domestic actors. While Coalition practices are justified as necessary elements of the "war on terrorism", many actions violate international law and encourage others to ignore international standards. In this way, many Coalition activities undermine the goals of enhancing national compliance with international law and weaken the Government's efforts to enforce international law standards. Furthermore, where Coalition forces engage in violent or abusive actions directed against Afghan citizens, their actions reinforce the Government's lack of control over the national territory.

50. Examples of alleged violations include entry into people's homes without arrest or search warrants, detention of nationals and foreigners without judicial authority or judicial review (sometimes for extended periods of time), beatings resulting in death, beatings causing bodily harm, forced nudity and public embarrassment, sleep deprivation, prolonged squatting, and hooding and sensory deprivation. Since no United States detention centre is open to inspection, there is no way of ascertaining the veracity of these allegations. However, several incidents have been reported publicly. On 1 and 2 September 2004, United States Army criminal investigators are reported to have recommended that two dozen United States soldiers face criminal charges in connection with the death of two prisoners.[31]

51. The independent expert has received reports from international human rights organizations and UNAMA of individuals who have died while held in detention by Coalition forces. At times, reports indicated that the bodies were returned to families showing signs of torture, including bruises and internal bleeding from severe beatings and serious burn marks on victims' skin.[32]

52. The Government has no knowledge of or control over such detained persons. Detention conditions are often below the standards of the Geneva Conventions, as has been reported by the International Committee of the Red Cross (ICRC) to the detaining forces on a confidential basis.[33] An American general has been appointed

to investigate these arrests, detention and interrogation practices, but his report has not yet been made public.[34] AIHRC has been denied access to these facilities, as has the independent expert who made requests to the appropriate United States authorities to visit the main detention facility in Bagram (see para. 9 (b) above).

53. The independent expert has received accounts of acts that fall under the internationally accepted definition of torture, contained in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. A man from Gardez described his treatment as follows, "They poured cold water over us and then started beating us with their fists and with sticks. Sometimes they picked us up on their shoulders and then threw us down. They were all American soldiers wearing uniforms ... They untied dogs and they frightened us with the dogs. The dogs bit us and scratched us with their teeth and nails ... When we were unable to stand anymore, they tied our hands to an iron rod on the top of the cell. This kept up from standing normally, and we were forced to stand on our toes." Numerous accounts in the press and by victims corroborate the common use of excessive force at Bagram airbase and the Kandahar military base, including sleep deprivation, forcing detainees to sit or stand in painful positions for extended periods of time, and other "stress and duress" techniques. Others have described beatings and various acts of humiliation.[35] Accounts of these violations were originally publicized in early 2002, and there is some evidence of links between techniques used in Afghanistan and actions that led to the abuse scandal in the Abu Ghraib prison in Iraq. In addition, many Afghans detained by Coalition forces have been detained for indefinite periods, sometimes held without any formal charge for over two years. There have been several reports by the United States Department of Defense on the question of treatment of detainees.[36]

VIII. Specific human rights violations

54. As stated in paragraph 4, the categories of human rights violations include a variety of issues, though most of them relate to the issue of security described in paragraphs 26 to 28 and, in particular, to the warlords. The situation is not, however, uniform throughout the country. In Kabul, where the Government's strength is concentrated and where ISAF and the international community are headquartered, violations are the fewest in number and improvements are most visible. Other regions also have more security and fewer human rights violations.[37] As political tensions ebb and flow in different regions, the human rights situation worsens or improves. Consequently, any regional reporting will differ, not only according to place, but also to time and circumstances.

55. The perpetuation of human rights violations arising out of problems regarding the administration of justice stem in part from the absence of a comprehensive plan encompassing the different aspects of justice: law enforcement, prosecution, the judiciary, corrections, and all of the attendant problems relating to structures, personnel, coordination, professional standards, administrative control, and the elimination or significant reduction of corruption. At present, donor countries provide funding and technical assistance to different programmes, but they are uncoordinated, ultimately not producing the cumulative effect desired. To remedy the situation requires the development of a comprehensive plan established by international and national experts who would then follow up on its implementation. Key to such a plan is an agreement by donor countries to pool their resources in

order to fund a plan that would be established on the basis of certain priorities and schedules to ensure that as many of its facets can proceed simultaneously, even though some would proceed at a faster pace.

56. The human rights situation of women in Afghanistan remains of serious concern.[38] Particularly worrisome is the detention of women for offences against social mores, women and couples under threat of being killed by their families for "honour crimes" and death threats that often follow a woman's escape from a forced or arranged marriage. Complaints and reports of forced marriages, including of girl children, have not decreased. Additionally, the absence of a legal and social support system has left many women trapped in abusive situations and has possibly led to an increased incidence of suicides, in particular through self-immolation.

57. Of concern to the independent expert are continued reports of trafficking, kidnapping, and smuggling of children. Few facts are available, but many anecdotal accounts are in circulation. The Government has begun to address the problem and a national action plan on combating child trafficking has been finalized by the Ministry of Labour and Social Affairs and submitted to the Cabinet. AIHRC, relevant ministries and international organizations have contributed to the plan, which focuses on five key areas of intervention for the coming year: prevention, protection, recovery and reintegration, collaboration and partnerships. A unified reporting format for cases has been developed and distributed among various networks in order to produce consolidated, consistent information. No comprehensive picture exists on the incidence of abduction and trafficking of children in terms of actual cases, circumstances and follow-up by law enforcement authorities. The question of whether child kidnapping is carried out in an organized way remains largely blurred. While he welcomes the above initiative, the independent expert is concerned about the reported lack of interest of the police in tackling these problems.

Detention

Detention facilities and due process

58. The independent expert is extremely concerned with the current situation of detentions, both formal and informal, within Afghanistan. Detention by non-State actors is common in Afghanistan, and is a gross violation of human rights and a direct affront to the legitimacy of the State. Formal detentions are only acceptable where there is a basic respect for due process, as well as least minimally acceptable conditions of internment. The independent expert calls attention to the issue of detentions because the practice tests the commitment of the State to respecting basic rule of law protections, and because this is an area where significant reform is possible. The independent expert is especially concerned with the conditions of detention in national prisons in Kabul and the provinces, women's prisons, secret national detention facilities, informal prisons used by warlords and local commanders, and the special case of prisoners transferred from Shiberghan to Pol-e Charkhi (see para. 65 below).

General prison conditions

59. The inability of national prisons to provide those detained with conditions that meet minimal international standards is shocking. The independent expert visited

the Pol-e Charkhi prison outside of Kabul, and found overcrowding and unhealthy conditions.[39] The independent expert has heard reports that jails in the countryside are often in an appalling state, with crumbling walls, no water and limited access to nutritious food. Prisoners are seldom allowed out of their cells, in the best of cases for between less than one hour to three hours a day. Medical facilities are almost non-existent. Bribery is rampant and physical abuse is routine. It should be noted that the Government of Italy offered to build a prison facility, but the Ministry of Justice has so far (six months) not identified an available parcel of land. The independent expert brought this matter to the attention of President Karzai, who indicated that he would take corrective measures.

Detention without charges and prolonged pre-trial detention

60. Individuals held in Government-controlled prisons are frequently held for months without being charged. Persons who are charged are held for extended periods of time without being tried. In some cases, pre-trial detentions exceed the sentence for the alleged crimes. These individuals, who may well be innocent of any crime, are held in detention with hardened criminals. In addition, children and juveniles are commonly held in the same cells as violent adult criminals. Corruption throughout the system is rampant. The independent expert has notified the Attorney-General who has acknowledged the existence of such practices, though specifying that he knew of only a limited number of cases. One of the problems stems from the Government's failure to establish clear lines of responsibility. The Ministry of Justice has nominal, but effectively no control over prisons. The Attorney-General does not feel that he can compel persons detained by the police and intelligence services to be turned over to his authority. No one seems to have or want to exercise authority in asking the courts to review extended pre-trial detentions.

Detention of women

61. The independent expert visited the women's detention centre in Kabul. It holds 40 women, who are often detained for crimes that are unsubstantiated. They live in the prison with their children in a situation, though far better than that of Pol-e Charkhi, which is nonetheless below contemporary standards. The women must share their cramped living space and food with their children, as no food is provided for them.

Private confinement of women

62. Another abhorrent situation throughout the country has to do with the confinement of women in the custody of tribal elders. Because of the absence of detention facilities for women in the districts (there are only three detention facilities for women in the country), women found to be guilty of acts that may not constitute legal offences are confined to the personal custody of tribal leaders and others. These women are sometimes forced into slave-like conditions outside the reach of the law and are reportedly subject to sexual and physical abuse. The charges brought against them are reported to arise in large part out of allegations of "immoral conduct", which does not, however, constitute a legal violation. In addition, some cases allegedly involve crimes committed by spouses and fathers for which the women are forced to accept responsibility. The independent expert has notified the President, the Attorney-General, the Minister of the Interior, and the

Chief Justice of the Supreme Court of this egregious situation, all of whom have promised to look into it.

Security service detentions and detention by the police

63. The independent expert has received reports of serious violations, such as torture committed in secret detention centres run by NSD, and has notified the Attorney-General.

Informal prisons

64. The independent expert has received reports of numerous informal prisons located around the country, which are generally run by warlords and local commanders. They exist outside the control of the State and beyond the reach of the law. The independent expert has expressed serious concern regarding these informal prisons, and has notified the Attorney-General and others of the need to quickly evaluate the situation and respond accordingly.

65. As stated in paragraph 9 above, on 12 September 2004, President Karzai ordered the release of all detainees transferred from Shiberghan prison in May 2004 and held in Pol-e Charkhi prison. The independent expert had since May 2004 expressed to the Government his concern at the situation of 734 Afghani and Pakistani detainees held illegally in the Pol-e Charkhi prison. The detainees were Taliban combatants who were captured in 2001 by Northern Alliance forces under the command of General Dostum. They had been held for over 30 months in violation of the Geneva Conventions. Originally, the detainees numbered between 3,200-4,000, and were kept in the Shiberghan prison facility under the control of General Dostum. Many prisoners obtained their release by paying ransom. Others died under conditions that have been described as murder and torture, such as those who reportedly died of suffocation in metal cargo containers.[40] These reports of deaths and torture should be investigated by the Government.

66. In May 2004, 849 of these detainees were transferred to government control. At that time, the independent expert wrote to the Minister of Justice asking for their release, but received no response. Subsequently, 124 of the detainees were released by presidential decree, essentially for health reasons, as they were reported to have contracted tuberculosis as a result of their detention conditions. Of these, 62 Pakistanis were returned to their country. Of the 734 remaining in the Government's custody, 372 were Pakistanis. It is also reported that more than 100 of the 733 detainees had either tuberculosis or serious lung conditions. Their detention conditions were below the standards of the Geneva Conventions, if they were considered prisoners of war; if not, they were protected under common article 3. In any event, their conditions were in total violation of the United Nations Standard Minimum Rules for the Treatment of Prisoners.

67. Their conditions had been verified by the independent expert, who visited the prison along with representatives of UNAMA and UNODC. The prisoners were kept in extremely crowded cells to which they were confined for at least 23 hours a day, and had only a few holes in the wall for their sanitary needs. Detainees reported to the independent expert that they had been beaten by the guards. There is no running water in the facility, and drinking water and food are scarce. No charges had been filed against any of the detainees.

68. The situation described above requires investigation of the conditions under which these detainees were held at Shiberghan under the control of General Dostum and possibly others, particularly with respect to the killing of detainees and their torture, both of which constitute violations of international human rights law and international humanitarian law. Furthermore, the physical sanitary and health conditions at Pol-e Charkhi prison call for immediate action for improvement by the Government and the international community. It is used as the country's main prison. As winter approaches, conditions for the prisoners at that location will become dire.

69. On 17 August 2004, President Karzai issued a decree approving the pardon of a number of categories of prisoners and the reduction of some sentences, including releasing female prisoners (except those involved in premeditated murders, inter-ethnic crimes, breaches of security abroad, armed robbery, thefts of historic relics, narcotics trafficking and child abduction); stopping the prosecution of children whatever the stage of the case (with the same exceptions); releasing prisoners over 60 and prisoners and detainees suffering from untreatable diseases; releasing male prisoners who had been sentenced to one year or less in prison; and releasing male prisoners sentenced to more than one year if they have less than six months left to serve. The independent expert has, however, been unable to ascertain whether this decree has been carried out.

Refugees and IDPs

70. As a result of three decades of conflict, large portions of the Afghan population were forced to become refugees or IDPs. With the fall of the Taliban, large numbers of refugees have returned to Afghanistan. Since March 2002, UNHCR has assisted in the repatriation of over 2.4 million refugees (about 1.9 million from Pakistan and 430,000 from the Islamic Republic of Iran). This number does not account for those refugees who have returned on their own, estimated to be over 270,000 from Iran alone. The Government estimates that at least 2.5-3 million Afghans are still living outside the country as refugees. Given current refugee return patterns, it is likely that many of these individuals will return to Afghanistan sometime in the near future. There are also hundreds of thousands of IDPs, most of whom live in the south and west of the country. As the Secretary-General stated:

> "By 20 May UNHCR had facilitated the return of 156,426 individual refugees to Afghanistan in 2004. Of these, 116,404 returnees came from Pakistan and 39,897 from the Islamic Republic of Iran. Since the operation began in March 2002, a total of 2,432,127 individuals (429,476 families) have been helped to repatriate to Afghanistan, among them 1,990,086 individuals from Pakistan and 431,310 individuals from the Islamic Republic of Iran. An additional 274,128 Afghans have returned spontaneously from the Islamic Republic of Iran since 2002. The number of returns from Pakistan in 2004 increased by about 30 per cent in comparison with 2003. It should also be taken into account that facilitated return from Pakistan only resumed on 1 March 2004, following a temporary hold due to security concerns. Of the returnees from Pakistan in 2004, some 25 per cent returned from camps, while some 75 per cent returned from urban areas ..." (ibid., para. 62).

71. As these individuals return to the country, whether to their original homes or to new settlement areas, they face an array of problems and, as highly vulnerable populations, they are often the victims of serious human rights violations. Returning refugees and resettled IDPs are commonly subjected to acts of violence, including killing; arbitrary arrest and detention; illegal occupation and confiscation of their land by warlords, commanders and others; forced labour, extortion, illegal taxation and other abusive economic practices; discrimination and persecution based on ethnic identity; and sexual violence and gender-related discrimination.

72. There are thousands of reported cases of returnees being subjected to these violations in many communities. One such case, which UNHCR has verified and brought to the attention of the independent expert, is that of approximately 200 Hazara families (about 1,000 individuals) displaced from Daikundi over the last decade by local commanders and now living in Kabul. Some members of the community arrived during the past year, having fled ethnically based persecution, including the expropriation of land and property, killings, arbitrary arrests and a variety of acts of severe intimidation perpetrated by warlords and local commanders who control the Daikundi districts and who are directly linked to a major political party whose leader occupies a senior governmental post. Some of the displaced families have petitioned the Ministry of the Interior, AIHRC, UNAMA and UNHCR, requesting intervention on their behalf. The newly appointed governor has pledged to tackle the ongoing human rights violations and the monopoly of power by warlords and commanders in the region. However, the fact that the main protagonists reportedly enjoy the support of a senior member of the Government means that a satisfactory solution is highly unlikely unless there is concerted and meaningful pressure exerted by the international community in tandem with internal actors.

Land disputes and housing

73. Another significant human rights issue involves illegal forcible seizure of land, access to land and housing, and the violations associated with land disputes. The problems regarding land are linked to many years of conflict, lack of clarity regarding land ownership, irregularities in the exercise of local and regional power, and the large number of returning refugees and IDPs. The value of land has increased substantially, and the country's highly irregular titling system and general lawlessness have allowed those with political power and armed backing to grab large tracts of land throughout the country. The general corruption of the legal system makes it easy for those with power to obtain false title to land, and the inability of the State to provide basic legal protection for landowners makes it difficult for those without connections or power to defend their rights.

74. The land situation in Afghanistan involves an array of interconnected problems. For example, different people often hold legal title to the same land. At various times, more than one titling agency existed or subsequent administrations provided different titles, so it is possible for legitimate competing claims to the same piece of property to exist. Also, those with title to land (or someone who has lived somewhere for a long time and may not have legal title) are often forcibly removed or denied access to their property by powerful individuals and groups. Sometimes this occurs at the order of an individual such as a warlord or local commander. Other times, a person may be forced off the land by a less dominant figure who possesses arms or has political connections.

75. In many areas, municipal authorities are charged with distributing unoccupied land and with approving various types of development projects. The independent expert has received testimony regarding numerous cases of authorities' demanding large bribes for the provision of titles and the approval of building projects.

76. In November 2003, the Special Property Disputes Resolution Court was established by presidential decree. It replaced an earlier system involving a commission, widely viewed as corrupt, that passed cases on to the Supreme Court. The Court can accept claims dating back to 1978, and is divided into sections dealing with claims in Kabul and those in other provinces. The Court can order compensation for illegally occupied land, and also determine who the proper owner is. The Court is underfunded, fails to take into account the special needs of IDPs in this domain, does not cover disputes where one side is the Government, and provides limited coverage for cases from the provinces.

77. Alongside the very complex administrative, logistical and legal issues surrounding tens of thousands of land and housing claims is the basic question of access to housing. Decades of violence have damaged the housing stock (as well as destroying the limited infrastructure of water systems, sewage, roads and electrical lines). To date, the international community has focused limited resources on financing a massive land titling and housing construction process.

78. The Special Rapporteur on adequate housing as a component of an adequate standard of living of the Commission on Human Rights, Miloon Kothari, visited Afghanistan in September 2003. In his report (E/CN.4/2004/48/Add.2), he focused attention on the situation in the Shirpur area of Kabul in which large amounts of land were given to government ministers, including the Minister of Defence, for a small percentage of their real value (para. 65). Many people who had lived for 20 to 30 years in the area were forced out and no compensation was paid. After the Special Rapporteur's report was released, a commission was set up to look into the case and other issues related to land and housing. The independent expert draws attention to the fact that limited, if any, progress has been made by this commission.

IX. Transitional or post-conflict justice

79. The independent expert draws attention to the importance of focusing on transitional or post-conflict justice. The nation has suffered nearly three decades of sustained violence characterized by gross violations of fundamental human rights and serious violations of international humanitarian law. The independent expert received testimony illustrating the severe impact of the conflict-related violence, which has had so many victims.

80. The independent expert understands that it is important for Afghanistan to develop a transitional or post-conflict justice strategy that is context specific and appropriate to the needs of Afghans, in particular the millions of direct and indirect victims of political violence. Of central importance is a commitment to address systematic impunity, acknowledge the suffering of victims through meaningful and responsive policies, including compensation, and ensure accountability to help prevent recurrence.[41] The independent expert encourages the Government to consider the full array of transitional justice strategies, including investigations and commissions of inquiry, criminal prosecutions, reparations, mechanisms of memorialization and education, non-criminal sanctions against responsible

individuals such as limiting their participation in government and/or military service, and various aspects of broad institutional reform.

X. Recommendations

Security

81. The international community should work in close coordination with the Government to consider the most effective ways of using international forces to improve the security situation throughout Afghanistan. It is likely that this process will require a substantial increase in foreign troop deployment. It may be useful to convene a meeting of international and domestic security experts who can apply lessons learned from other post-conflict environments to aid in the development and implementation of new security policies for strengthening the authority of the Government while respecting fundamental human rights and basic rule of law principles.

82. The DDR process should be strengthened to bring non-State actors' military power under government authority, while providing alternative employment opportunities for those who are in the armed ranks of warlords and local commanders.

83. The international community should assist the Government in a more significant way than it is presently doing in training the various security agencies, establishing internal management, professional standards and quality control, increasing salaries, encouraging promotion on the basis of merit, and breaking up patterns of ethnic and tribal allegiances. Above all, warlords and those loyal to them should be removed from positions of control in these agencies.

84. The Government, with the assistance of Coalition forces and ISAF, should continue to engage in concerted action against non-State armed groups, whether they be warlords, local commanders, drug lords, or other elements of common criminality, as a means of improving domestic security and strengthening the role of the Government as the guarantor of social order.

85. The Government should significantly enhance its efforts to develop a comprehensive plan for reducing poppy cultivation and opium trafficking. While a programme of this type may not be simple to devise, it is important to note that the Taliban successfully reduced drug production by 95 per cent of current levels. The future of Afghanistan requires that the rapid growth of the drug industry be quickly curtailed. An appropriate policy should be designed with the assistance of domestic and international experts and should be based on lessons learned from successful anti-drug programmes in other countries. More significantly, it requires an effective combination of all government security forces, Coalition forces and ISAF. Furthermore, the establishment of a central bank and a controlled banking system should be one of the priorities in ensuring that the economy will not come to be dominated by those controlling drug proceeds.

Rule of law

86. **A comprehensive plan should be developed encompassing the different aspects of justice, including law enforcement, prosecution, the judiciary, corrections, and all of the attendant problems relating to structures, personnel, coordination, professional standards, administrative control, and the elimination or significant reduction of corruption. Established by international and national experts who would then follow up on its implementation, the plan should rely upon an agreement by donor countries to pool their resources on the basis of certain priorities and schedules to ensure that as many of its facets as possible can proceed simultaneously. The support of the Secretary-General in initiating such a project would be vital, as is the support of various United Nations agencies and bodies. It would rely on the capacities of UNAMA and UNDP in Afghanistan, which would need to be enhanced.**

87. **The Government should establish a national agency, with international technical assistance, to prevent, investigate and punish acts of corruption on the part of public officials.**

Detention facilities and due process

88. **The physical sanitary and health conditions at Pol-e Charkhi prison should be improved to conform to the United Nations Standard Minimum Rules for the Treatment of Prisoners, before the onset of winter.**

89. **The Government should release all female prisoners held in State detention facilities for actions that do not constitute crimes under Afghan law. Because these women are in need of shelter and assistance, the Government should work with international donors to set up temporary homes and rehabilitation centres to aid them and their children in reintegrating into Afghan society.**

90. **The Government should issue a decree prohibiting the confinement of women in the custody of private individuals.**

91. **The Government should release from detention all individuals held for an extended period of time without being charged with a crime, unless the Government can rapidly assess the case, appropriately charge the individual and then provide a fair and speedy trial.**

92. **The Government should provide prompt trials for all alleged criminals held in detention more than six months.**

93. **The Government should release all pre-trial detainees held for over six months who have already served at least half of the average sentence for the crime for which they have been charged.**

94. **The Government should release all prisoners held by security forces without legal process.**

95. **The Government should create a national prison monitoring body to investigate conditions and implement remedial actions. This monitoring body could be established with the assistance of the international community and with the technical aid of professionals working at UNAMA, UNDP, UNODC**

and other relevant organizations. It should be mandated to enforce the United Nations Standard Minimum Rules for the Treatment of Prisoners.

96. **The Government should monitor the impact of the new code of criminal procedure regarding pre-trial detention and other key elements of basic due process protection.**

97. **The Government should create a system to assist and train public defenders through a comprehensive plan linking capacity-building, international funding and possible legislative changes.**

Women and children

98. **The Government should enact a decree prohibiting the transfer of young girls in marriage as payment of "blood money" and as a way of settling family debts.**

99. **The Government should take strong measures to curtail the practice of child abduction and child trafficking, as well as child labour.**

100. **The Government should address the plight of an estimated 500,000 children who are parentless, who have been abandoned and who are used as exploited labour.**

101. **The above practices constitute violations of the Convention on the Rights of the Child, as well as other international conventions concerning exploitative labour and slavery and slavery-like practices.**

Land disputes and housing

102. **The Government should make specific policy changes regarding the Special Property Disputes Resolution Court including providing for increased funding, due account being taken of the needs of IDPs, and significant expansion of the Court to the provinces. The Government may also consider working with the international community to create mechanisms of formal dispute resolution for various property, land and water resource disputes.**

103. **The Government should move forward on its investigations and take concerted action regarding the situation in Shirpur and publish the report of the commission established to examine the Shirpur case and other land issues.**

104. **The Government and the international community should develop a focused plan to address pressing land and housing issues in Afghanistan. The resulting comprehensive policy should involve significant investment in a rational and efficient land titling system, as well as a significant financial commitment to new housing construction.**

Education

105. **The Government should establish a commission to review the curriculum in public schools and exercise strong control over private religious schools, including enhancing human rights education at all levels. Legal education**

should also combine the faculties of law and Shari'ah in order to integrate secular and Shari'ah law, with a view to better training of future lawyers, judges, prosecutors and public officials to meet the demands of a modern society. Special emphasis should be placed on enhancing the prospects of women's education.

Transitional or post-conflict justice

106. **The Government and the international community should work together to develop a comprehensive policy for transitional or post-conflict justice. This process should be understood as involving a multiplicity of distinct strategies that may be implemented over an extended period of time. It should also involve all relevant actors in Afghan civil society, with the support of the United Nations and the international community.**

107. **A basic policy should be enunciated in a government decree that would prohibit warlords, local commanders and drug lords from assuming public positions.**

Strengthening civil society

108. **AIHRC, which has already demonstrated its value to the advancement of human rights, should be strengthened and supported in its mission, which is likely to be expanded, in particular after the presidential and legislative elections.**

109. **Freedom of the press should also be supported, and the Government should establish a media commission to oversee and enforce the rights and duties of free and responsible media in helping to strengthen democracy and the rule of law.**

Coalition forces and ISAF

110. **The Government should establish formal SOFA agreements with the Coalition forces and ISAF, detailing the basis on which Coalition forces and ISAF can engage in arrests, search and seizure, and detention of persons. The agreements should specify that the detention conditions of the persons arrested and detained by Coalition forces and ISAF must be in accordance with the international law of armed conflict and the United Nations Standard Minimum Rules for the Treatment of Prisoners, and that they be internationally supervised in accordance with the Geneva Conventions and their national supervision in accordance with the Constitution and laws of Afghanistan. The Coalition forces and ISAF should also be required to abide by international legal standards of human rights contained in relevant United Nations instruments.**

Conclusion

111. Because of the delay of more than one year in the appointment of an independent expert, the present report covers a wide, though not exhaustive range of issues; other issues will be covered in the final report, due to be submitted to the Commission on Human Rights at its sixty-first session.

112. There is no doubt that the people of Afghanistan are better off today than they were during the 23 years of conflict that preceded 2001. It is certain that the people do not want to return to the chaos and destruction of the past, and both the international community and the Government need to be cognizant of the fact that the people desire democracy, justice, the opportunity for economic development, and to see their affairs governed by the rule of law.

113. The transitional government of President Karzai has accomplished a great deal, and should be commended and recognized for these accomplishments in the face of extraordinary challenges. The fact that many difficulties persist does not detract from the progress that has been achieved.

114. There are high expectations attached to the first exercise of democracy — the presidential elections of 9 October 2004. The large number of persons who have registered to vote and those expected to be registered abroad is an indication of the popular desire to participate in the democratic process. In particular, the large number of women who have registered and their expectation of becoming a viable part of the political process are both welcome and encouraging signs for the future.

115. There is no doubt that without the support of the international community, and more particularly the significant commitment of the United States, the people of Afghanistan would not have reached the level that they have attained in the last two years. Myriad difficulties still confront this society in transition. Only the continued efforts and commitment of the international community, and in particular of the donor countries that have contributed so much to the reconstruction process, can achieve the desired result of transitioning Afghanistan into a democratic society governed by the rule of law and where respect for and observance of human rights is part of the culture of its people.

Notes

[1] See unpublished draft country profile of Afghanistan and the international human rights system (UNAMA, June 2004) and reports of the Special Rapporteur on the situation of human rights in Afghanistan (E/CN.4/2002/43 and E/CN.4/2003/39).

[2] See *Afghanistan: Opium Survey 2003*, UNODC, 2003 and *2004 World Drug Report*, UNODC, 2004.

[3] See Jim Garamone, "Afghan national army brings security, sets example", American Forces Press Service, 13 August 2004; Michael Bhatia, Kevin Lanigan and Philip Wilkinson, *Minimal Investments, Minimal Results: The Failure of Security Policy in Afghanistan*, Afghan Research and Evaluation Unit, June 2004.

[4] See "Afghans to free 400 Pakistani prisoners", *The New York Times*, 24 August 2004; Kim Barker, "363 Pakistanis who fought with Taliban freed", *Chicago Tribune*, 13 September 2004.

[5] The first request was made by UNAMA on behalf of the independent expert to the Combined Forces Command on 2 August, followed by another one on 5 August to the Commander, Combined Forces Command. On 9 August, the independent expert was referred by the Combined Forces Command to the Permanent Mission of the United States of America to the United Nations. His letter to the latter on 12 August was responded to on 19 August, informing him that the request should have been sent to the Permanent Mission in Geneva. A verbal request was made on 19 August by the independent expert to United States Ambassador Khalilzad describing the above struggle. On 20 August, an aide to Ambassador Khalilzad informed the independent expert that a visit to Bagram could not be arranged.

[6] As the Secretary-General reported:

> "The human rights situation in Afghanistan is a continuing source of serious concern. In the north, north-east and west, commanders act with impunity and are seen by many as being responsible for a wide range of repressive activities. The role of local authorities in carrying out violations is particularly worrisome as their involvement in acts of intimidation, extortion, arbitrary arrest, illegal detentions and forced occupation strengthens perceptions of impunity and tarnishes people's views of the central Government. The reappointment of confirmed human rights violators to government posts compounds this problem" (A/58/868-S/2004/634, para. 47).

[7] There has been no census since 1976, and even that census was not fully completed.

[8] See United States Central Intelligence Agency, *The World Factbook 2004*.

[9] See UNHCR, *Refugees, vol. 4, No. 133, 2003, Afghanistan: The Most Important Operation*; UNHCR, UNHCER, *The State of the World's Refugees 2000*; UNHCR, *Internally Displaced Persons: Questions and Answers*, February 2004.

[10] See World Bank, Afghanistan, State Building, Sustaining Growth and Reducing Poverty: A Country Economic Report, No. 29551-AF, 29 June 2004, p. 120.

[11] Ibid., p. 16.

[12] See generally Barnett Rubin, *The Fragmentation of Afghanistan: State Formation and Collapse in the International System* (2nd ed.), 2002; Rasul Bahsh Rais, *War Without Winners: Afghanistan's Uncertain Transition After the Cold War*, 1994; Riaz M. Khan, *Untying the Afghan Knot: Negotiating Soviet Withdrawal*, 1991; Robert D. Kaplan, *Soldiers of God: With the Mujahidin in Afghanistan*, 1990; Hafizullah Emadi, *State, Revolution, and Superpowers in Afghanistan*, 1990; Jeri Laber and Barnett R. Rubin, *A Nation is Dying: Afghanistan Under the Soviets*, 1988; Raja Anwar, *A Tragedy of Afghanistan: A First-Hand Account*, 1988.

[13] The United Nations has had a presence in Afghanistan since 1988. Previous missions include UNGOMAP (United Nations Good Offices Mission in Afghanistan and Pakistan), OSGAP (Office of the Secretary-General in Afghanistan and Pakistan), OSGA (Office of the Secretary-General in Afghanistan) and UNSMA (United Nations Special Mission to Afghanistan).

[14] A number of NGOs have issued reports which can be found on their respective web sites, including Amnesty International, the Council on Foreign Relations (New York), Human Rights Watch, the International Crisis Group and the United States Institute of Peace. In particular, see Barnett Rubin, U.S. Must Confront Warlords, Deal with Taliban, Council on Foreign Relations, July 2004; Military Assistance to the Afghan Opposition, A Human Rights Watch Backgrounder, Human Rights Watch, October 2001; Afghanistan Constitutional Process Marred with Abuses, Human Rights Watch, January 2004.

[15] Some schools attended by girls have been burned in the last two years. See Shahabbudin Tarakhil and Hafizullah Gardish, Girls' Schools Become Target, Institute for War and Peace Reporting, 24 June 2004.

[16] See generally *The Afghan Transitional Administration Prospects and Perils*, International Crisis Group, 30 July 2002, pp. 8-9; *Unfinished Business in Afghanistan: Warlordism, Reconstruction, and Ethnic Harmony*, United States Institute of Peace, April 2003.

[17] The independent expert received testimony that commanders used their connection to Coalition forces to threaten and extort money and goods from local residents. For example, local commanders known to work closely with Coalition forces are reported to have shown local residents a satellite phone and then threatened to call in a bombing raid unless they were given land, animals and money. The independent expert has also heard reports that local commanders turned individuals over to the Coalition forces as suspected Taliban or Al-Qaida members in order to punish personal enemies and to extort money from residents by threatening to "send [them] to Guantánamo".

[18] It is widely known that the presidential election scheduled for 6 October 2004 is based on this formula, and the same is expected of the 2005 legislative elections.

[19] See International Crisis Group, op. cit., note 15, p. 8.

[20] See Bhatia, Lanigan and Wilkinson, op. cit., note 2. See also *NATO's Shame in Afghanistan*, Human Rights Watch, 25 June 2004.

[21] See International Crisis Group, *Disarmament and Reintegration in Afghanistan*, September 2003.

[22] See A/58/868-S/2004/634 and UNODC, op. cit., note 2.

[23] See ibid.

[24] One example is that of General Dostum, a notorious warlord who is alleged to have committed mass crimes and gross violations of fundamental human rights. He commanded the Northern Alliance forces in Mazar-i Sharif and worked closely with the Coalition forces. He is identified in many accounts as having committed such crimes. See John Sifton, "Afghanistan's warlords still call the shots", *Asian Wall Street Journal*, 24 December 2003.

[25] This exercise finds its origin in a recommendation of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Asma Jahangir in her report to the Commission on Human Rights at its fifty-ninth session (E/CN.4/2003/3/Add.4) and subsequent consultations between the late High Commissioner for Human Rights, Sergio Vieira de Mello, and the then Special Representative of the Secretary-General for Afghanistan, Lakhdar Brahimi. OHCHR, with the agreement and support of UNAMA and AIHRC, is carrying out this exercise, compiling existing documentation on past human rights violations in Afghanistan (1978-2001). The report will complement a national consultation being undertaken by AIHRC to ascertain the views of the population on how past abuses should be addressed. Both reports are intended to assist the Afghan authorities in deciding how to pursue transitional justice.

[26] See report of the Secretary-General to the Security Council on the rule of law and transitional justice in conflict and post-conflict societies (S/2004/616); note by the Secretary-General transmitting the independent study on best practices, including recommendations, to assist States in strengthening their domestic capacity to combat all aspects of impunity, by Diane Orentlicher (E/CN.4/2004/88); question of the impunity of perpetrators of violations of human rights (civil and political rights): final report of Louis Joinet, Special Rapporteur of the Subcommission on Prevention of Discrimination and Protection of Minorities (E/CN.4/Sub.2/1996/18). See also M. Cherif Bassiouni, "Accountability for Violations of International Humanitarian Law and Other Serious Violations of Human Rights", in *Post-Conflict Justice*, M. Cherif Bassiouni (ed.), 2002.

[27] The Italian Ministry of Foreign Affairs awarded a contract to the International Development Law Organization (IDLO) (Rome) and to the International Institute of Higher Studies in Criminal Sciences (ISISC) (Siracusa) to undertake the training of 450 judges over the period of one year. IDLO undertook training in commercial and civil areas and ISISC in criminal justice and human rights areas. In addition, both programmes trained trainers for the future. The Italian initiative has also produced an abbreviated code of criminal procedure. Training on the code is presently ongoing through ISISC staff. The Government of Italy has also assisted with the refurbishing of the women's prison facility in Kabul.

[28] For more information on Germany's programme in Afghanistan, see: http://www.auswaertigesamt.de/www/en/laenderinfos/laender/laender_ausgabe_html?type_id=14&land_id=1#7.

[29] These programmes are described in various web sites, including those of the respective Governments.

[30] Among those reporting on human rights violations are Amnesty International, Human Rights Watch and, in general, the International Crisis Group. Specific human rights reporting efforts are also supported by the Open Society Institute.

[31] See Eric Schmitt and David Rohde, "about two dozen GIs to face trial or other punishment in deaths of two afghan prisoners", *The New York Times*, 2 September 2004, p. A8.

[32] It should be noted that these and other accounts of human rights violations are difficult to substantiate, since there is no formal body collecting such data or to which complaints can be made. As a result, much reliance is placed on the media and NGOs, raising a question about confirmation of the veracity of these allegations. See Afghan Massacre, a documentary by Jamie Doran (2002), presenting a filmed accusation directed against alleged excessive use of force by United States troops in November 2001 in the Oala-e Janghi prison and the subsequent handling of prisoners. The documentary is illustrative of such anecdotal reports.

[33] ICRC has also reported that an undisclosed number of persons are held in various field locations for periods up to two months without notification being given to ICRC, which only has access to these prisoners once they are transferred to the facilities at Kandahar and Bagram.

[34] Brig. Gen. Jacoby is believed to have completed his report some time in July, but it has not yet been cleared by the Department of Defense for public release.

[35] See Sewell Chan, "Pentagon reinforces policy for reporting deaths of detainees", *The Washington Post*, 11 June 2004, p. A18. See also Human Rights Watch, *Enduring Freedom: Abuses by U.S. Forces*, March 2004.

[36] See Report of the Independent Panel to Review DoD Detention Operations, August 2004 (Schlesinger report), the Investigation of the 800th Military Police Brigade and 205th Military Intelligence Brigade (Taguba report), the Investigation of the Abu Ghraib Detention Facility, 23 August 2004 (Jones-Fay report), and the Department of the Army Inspector General Detainee Operations Inspection report, 21 July 2004 (DAIG report). The applicable legal standard is the United States Army Interrogation Manual (FM 34-52).

United States Forces in Afghanistan were informed by the Department of Defense (DoD) that the Geneva Conventions did not apply to Al-Qaida and that Taliban combatants were not entitled to prisoner of war status. Interrogation techniques used in Afghanistan sometimes went beyond those authorized by the standard Army Interrogation Manual (FM 34-52). A January 2003 communication from the Commander in Afghanistan included a list of techniques being used in Afghanistan from a Special Operations Forces (SOF) Standard Operating Procedures document. The 519th Military Intelligence Battalion assisted SOF interrogations in Afghanistan and were aware of the more aggressive SOF techniques. FM 34-52 lists 17 authorized interrogation methods. The interrogation techniques used in Afghanistan that were not authorized by FM 34-52 included: removal of clothing, isolation for long periods of time, stress positions, exploiting fear of dogs, and sleep and light deprivation. These techniques were intended for use only in Guantánamo under carefully controlled conditions and with considerable oversight.

According to the Jones-Fay report, techniques used at Abu Ghraib against detainees covered by the Geneva Conventions were only authorized for use at Guantánamo and in Afghanistan against detainees determined by the Administration not to be covered by the Geneva Conventions.

[37] See A/58/868-S/2004/634.

[38] See report of the Secretary-General to the Commission on the Status of Women on the situation of women and girls in Afghanistan (E/CN.6/2004/5) and the note by the Secretary-General

transmitting the report of the Special Rapporteur on violence against women on the situation of women and girls in Afghanistan (A/58/421).

[39] The independent expert visited a cellblock that had been recently refurbished with the technical assistance of UNODC, finding this area to be relatively acceptable and a clear sign of the possibility of significantly improving prison conditions.

[40] See United States Department of State, Bureau of Democracy, Human Rights and Labor, Country Reports on Human Rights Practices — 2002; Preliminary Assessment of the Alleged Mass Graves in the Area of Mazar-i Sharif, Afghanistan, Physicians for Human Rights, 16-21 January and 7-14 February, 2002; "Physicians for Human Rights renews calls for full forensic investigation into alleged killing of Taliban prisoners", press release, Physicians for Human Rights, 13 June 2002.

[41] See Joinet, Orentlicher and Bassiouni, op. cit., note 27.